



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

MAY 20 2013

Nanci M. Whitley, Treasurer
Beaven for Congress
P.O. Box 350097
Palm Coast, FL 32135

RE: MURs 6574 & 6628

Dear Ms. Whitley:

On May 17, 2012, and August 23, 2012, the Federal Election Commission notified Beaven for Congress and you in your official capacity as treasurer (the "Committee") of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On May 7, 2013, based upon the information contained in the complaint and information provided by you, the Commission decided to dismiss the matter and close its file. On that date, the Commission also found that there is no reason to believe the Committee violated the Act with respect to any alleged discrepancies between the Committee's reports and the FEC website candidate summary page. Accordingly, the Commission closed its file in this matter on May 7, 2013.

The Commission encourages the Committee to review the Factual & Legal Analysis which sets forth the statutory and regulatory provisions considered by the Commission in this matter, a copy of which is enclosed for your information and future reference. In particular, the Commission reminds you, pursuant to 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 103.3(b)(3), (4); and 11 C.F.R. § 110.1(b)(5)(i), (ii)(B)-(C), to neither redesignate or refund any excessive contribution. For further information on the Act, please refer to the Commission's website at www.fec.gov or contact the Commission's Public Information Division at (202) 694-1100.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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If you have any questions, please contact Frankie Hampton, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman
General Counsel



BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration

Enclosure
Factual & Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Beaven for Congress and MURs 6574 & 6628
Nanci Whitley as treasurer

I. INTRODUCTION

These matters were generated by complaints filed by Vipin Verma on May 11, 2012, and August 16, 2012, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by Beaven for Congress and Nanci Whitley in her official capacity as treasurer (the "Committee"). They were scored as low-rated matters under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Complainant Vipin Verma has filed two separate complaints alleging irregularities in reports filed by Beaven for Congress and Nanci Whitley in her official capacity as treasurer (the "Committee");¹ in MUR 6574, the Complainant alleges that the Committee's 2012 April Quarterly Report and amendments contain irreconcilable discrepancies in cash on hand, receipts and disbursements; in MUR 6628, the Complainant alleges cash on hand discrepancies between two sets of successive filings. MUR 6574 Compl. at 1; MUR 6628 Compl. at 1.

In MUR 6574, the Complainant states that in the Committee's 2012 April Quarterly Report, the first report filed by the Committee, the Committee reported total receipts of \$23,810, beginning cash of \$16,583, and cash on hand of \$27,951 and asserts it is "inconceivable" that the

¹ Vipin Verma was a congressional candidate in Florida's 6th District ("FL-06"); Beaven for Congress is the principal campaign committee for Heather Beaven, a candidate in FL-06.

1 Committee "has more cash on hand than was taken in total receipts." MUR 6574 Compl. at 1.
2 The Complainant also claims that the \$13,875.62 cash on hand reported in an amended 2012
3 April Quarterly Report² was inconsistent with the \$16,583 cash on hand figure shown on the
4 FEC website's candidate summary page.³ *Id.* The Complainant also alleges a discrepancy
5 between an amended April Quarterly Report, in which the Committee reported \$9,734.38 in total
6 disbursements for the reporting period, and the candidate summary page, which indicates that the
7 Committee made \$12,442 in total disbursements. The Complainant then claims that the
8 Committee did not disclose the source of funds for its beginning cash on hand in its April
9 Quarterly report, and also alleges that the Committee accepted an excessive contribution.⁴ *Id.* In
10 MUR 6628, the Complainant claims that the beginning cash on hand of \$14,250 reported in the
11 Committee's 2012 July Quarterly Report deviated from the closing cash on hand of \$14,249.54
12 in its amended 2012 April Quarterly Report, which was filed on July 11, 2012, and claims that
13 the beginning cash on hand of \$14,250 reported in the Committee's 2012 Pre-Primary filing
14 differed from the closing cash on hand of \$47,567.19 in its 2012 July Quarterly Report.⁵ MUR
15 6628 Compl. at 1.

² The Complaint refers to the "latest amendment of the April Quarterly." MUR 6574 Compl. at 1. The Committee, however, filed four amendments to the April Quarterly report — on April 13, April 15, May 31, and July 11. Given that the Complaint was filed on April 27, 2012, it is likely that the Complaint refers to the April 15, 2012, amendment to the April Quarterly report.

³ In the FEC website's candidate summary page, it reflects a combined total of all financial information reported in connection to a candidate over a two-year cycle, from January 1 of the odd-numbered year through December 31 of the following year, and includes information drawn from the candidate's principal campaign committee and all authorized committees. The information is generated by data filed with the FEC, and can be found by searching the candidate or committee's name on the FEC website:
<http://www.fec.gov/finance/disclosure/srssea.shtml>.

⁴ On its initial 2012 April Quarterly Report, and subsequent disclosure reports, the Committee reported a \$3,000 contribution from Michael H. Kerr, received on March 20, 2012, designated for the primary election.

⁵ The \$14,249.54 closing cash on hand in the 2012 April Quarterly Report appears to have been rounded to the nearest dollar amount (\$14,250) when it was reported as the beginning cash on hand in the 2012 July Quarterly Report.

1 In response to the MUR 6574 complaint, the Committee, without providing any specific
2 detail, acknowledged that its 2012 April Quarterly Report was in error. MUR 6574 Resp. at 1.
3 The Committee claims that the error was discovered immediately upon filing its report, "and the
4 FEC was notified."⁶ *Id.* In response to the MUR 6628 complaint, the Committee acknowledged
5 that its initial pre-primary filing had erroneously reported the beginning cash on hand balance,
6 and explained that it had used an incorrect date for the reporting period when calculating the
7 beginning cash on hand. MUR 6628 Resp. at 1. The Committee also stated that after
8 discovering the error, it spoke with the Reports Analysis Division ("RAD"), and immediately
9 filed an amendment.⁷ *Id.*

10 B. Legal Analysis

11 Committees that report an initial cash balance on their first FEC filing are required to
12 disclose the source of funds. 11 C.F.R. §§ 104.3(a)(1); 104.12. In its initial 2012 April
13 Quarterly Report, the Committee reported a beginning cash on hand balance of \$13,875.62, but
14 the Committee did not clarify the source of funds. After filing two amended reports in April
15 2012 that neither changed the beginning cash on hand nor disclosed the source of the funds, the
16 Committee, on May 31, 2012, filed another amendment, in response to a Request for Additional
17 Information ("RFI") from RAD. In that amendment, the Committee reported a beginning cash
18 on hand balance of zero and a closing cash on hand balance of \$13,975.62. Subsequently, the

⁶ It appears the Committee is referring to amendments to its 2012 April Quarterly Report, filed on April 13, 2012, and April 15, 2012, as well as telephone conversations with the Reports Analysis Division ("RAD"). The Committee also claims it had been awaiting instructions on how to properly correct its report. The record is vague with regard to the source from which the Committee was awaiting instructions. MUR 6574 Resp. at 1. RAD telephone logs show that the Committee called RAD in April 2012 with questions about reporting properly. The telephone logs indicate that in two instances the Committee's questions were answered, and in a third instance RAD advised the Committee to contact its software vendor for specific help with correcting a report.

⁷ The Committee enclosed a copy of its amended 2012 Pre-Primary Report, filed on August 15, 2012.

1 Committee filed an additional amendment in July 2012, disclosing a closing cash on hand
2 balance of \$14,249.54.⁸ Based on the available information, it appears that the Committee made
3 an effort to correct its reports, sought assistance from RAD, and has revised its 2012 April
4 Quarterly Report to correctly reflect the Committee's finances. Due to the Committee's
5 corrective action, the Commission exercised its prosecutorial discretion and dismissed this matter
6 pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), as to this allegation.

7 Committees are required to accurately report their cash on hand at the beginning of a
8 reporting period. See 2 U.S.C. § 434(b)(1), (7)-(8). On July 30, 2012, the Committee filed its
9 2012 Pre-Primary, reporting \$14,250 in beginning cash on hand.⁹ On August 15, 2012, the
10 Committee filed an amended 2012 Pre-Primary, correcting its beginning cash on hand to match
11 the closing cash on hand in its preceding report: \$47,567.19. The Committee acknowledged that
12 it had erroneously reported its beginning cash on hand in its original filing, and stated that after
13 discovering the error it immediately amended the report. Because the Committee promptly
14 amended its 2012 Pre-Primary to correct the error, the Commission exercised its prosecutorial
15 discretion and dismissed pursuant to *Heckler* as to the allegation that the Committee failed to
16 accurately report its cash on hand balance in the 2012 Pre-Primary Report.

17 As to the alleged discrepancies between the Committee's reports and the FEC website
18 candidate summary page, we note that during the 2011-2012 election cycle, two separate

⁸ After the 2012 April Quarterly Report amendments were filed, RAD sent no further requests to the Committee regarding this issue.

⁹ The amount initially reported in the Pre-Primary Report, \$14,250, was the same as the beginning cash on hand reported in the prior report, the 2012 July Quarterly Report, instead of the closing cash on hand in that report, \$47,567.19.

1 authorized campaign committees used the name Beaven for Congress.¹⁰ The information on the
2 FEC website's candidate summary pages shows a combined total of all committees connected to
3 a candidate during a two-year cycle, thus the figures on Beaven's candidate summary page
4 reflected both committees.¹¹ The differences between the candidate summary page and the
5 Committee's disclosure reports are due to a combined summary of both committees and are not
6 the result of reporting errors by the Committee; therefore, the Commission found no reason to
7 believe the Committee and its treasurer violated the Act or underlying Commission regulations
8 with respect to this allegation.

9 Excessive contributions to a federal candidate's campaign are prohibited.¹² See 2 U.S.C.
10 § 441a(a)(1)(A). If a committee receives a contribution that appears to be excessive, the
11 committee may return or deposit the contribution. 11 C.F.R. § 103.3(b)(3). If a contribution is
12 deposited, a committee may request that the contributor redesignate or reattribute the
13 contribution in accordance with 11 C.F.R. § 110.1(b), (k), or 110.2(b). *Id.* If the contribution is
14 not redesignated or reattributed, the treasurer must refund the contribution within 60 days. On its
15 2012 April Quarterly Report and subsequent filings, the Committee reported that Michael H.
16 Kerr contributed \$3,000 on March 20, 2012, for the primary election. The Committee did not

¹⁰ The first, FEC ID C00463778, was for Beaven's 2010 campaign, which was in existence from July 10, 2009, through April 21, 2011. The final disclosure report for the first committee was filed on April 14, 2011, and reported a beginning cash on hand balance of \$2,707.84. The second committee, FEC ID C00515106, filed its 2012 April Quarterly Report on April 13, 2012, and reported a beginning cash on hand balance of \$13,875.62.

¹¹ The figures on Beaven's candidate summary page reflected the first committee's final report from April 2011 and the second committee's initial report from April 2012. Thus, the beginning cash on hand on the candidate summary page showed a combined total for both committees of \$16,583 (\$2,707.84 + \$13,875.62). Similarly, the final report of the first committee, from April 2011, indicates \$2,707.84 in total disbursements were made in that reporting period. Combined with the total disbursements of \$9,734.38 reported on the April 15, 2012, amended report, the candidate summary page would show total disbursements of \$12,442.22.

¹² The FEC adjusts certain contribution limits to index for inflation. At the time of the activity, the limit that individuals were permitted to contribute to a candidate's authorized committee, per election, was \$2,500. 76 Fed. Reg. 8368, 8370 (Feb. 14, 2011).

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1 address this in its response and has not reported a refund of the excessive amount, a
2 redesignation toward the general election, or a reattribution. Therefore, the Committee appears
3 to be in violation of the contribution limits set forth in 2 U.S.C. § 441a.

4 In furtherance of the Commission's priorities as discussed above, the Commission
5 exercised its prosecutorial discretion and dismissed this matter pursuant to *Heckler v. Chaney*,
6 470 U.S. 821 (1985), as to the allegation involving the Committee's acceptance of an excessive
7 contribution. Additionally, in light of the fact that the Committee had not taken corrective action
8 regarding the receipt of an apparent excessive contribution, the Commission reminded the
9 Committee to either redesignate, reattribute, or refund the excessive contribution pursuant to 11
10 C.F.R. § 103.3(b) and 11 C.F.R. § 110.1(b)(5), and amend its 2012 April Quarterly Report
11 accordingly.

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